

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-114-E - ORDER NO. 2022-190
MARCH 18, 2022

IN RE: Petition for Declaratory Order with)	ORDER DENYING
Verification of Orangeburg County Solar)	PETITION FOR
Project, LLC and Orangeburg South Solar)	DECLARATORY ORDER
Project, LLC both Wholly Owned)	
Subsidiaries of Savion, LLC)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Petition for Declaratory Order filed by Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC, both wholly owned subsidiaries of Savion, LLC, (collectively herein “Joint Petitioners”). The Petition for Declaratory Order was filed pursuant to S.C. Code Ann. Reg. 103-825 to request that the Commission issue an Order confirming the following:

(1) The Orangeburg County Solar Project and Orangeburg South Solar Project (collectively “the Projects”) do not meet the definition of a major utility facility, as defined in S.C. Code Ann. § 58-33-20, merely because they will share a single 200-foot 230kV generation tie (gen-tie) line;

(2) The Projects do not meet the definition of a major utility facility, as defined in S.C. Code Ann. § 58-33-20(a), because each project will operate at a capacity less than 75 MW; and

(3) Because the Projects do not meet the definition of a major utility facility, as defined in S.C. Code Ann. § 58-33-20, the Joint Petitioners are not required to obtain a Certificate of Environmental Compatibility pursuant to S.C. Code Ann. § 58-33-10, et seq.

Dominion Energy South Carolina, Inc. intervened in this matter, as did Carolinas Clean Energy Business Association. The Office of Regulatory Staff is a party to this matter, pursuant to S.C. Code Ann. Section 58-4-10 (Supp. 2021). After the filing of briefs and proposed orders, oral arguments were held on October 20, 2021, before the Commission.

The Petition in this matter asserts the following, in relevant part:

(1) Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC are separate entities, established for the purpose of developing the Orangeburg County Solar Project and the Orangeburg South Solar Project, respectively.

(2) The projects are separated by approximately one mile.

(3) Each project will consist of a single electric generation facility designed to operate at a limited capacity, producing less than seventy-five megawatts.

(4) A single 230 kV generation tie (gen-tie) line will connect the 'Project' Substation to the designated Point of Intersection (POI), which is Santee Cooper's Mill Branch 230 kV Switching Station. The gen-tie line will be approximately 200 feet in length and it will be located entirely within the Orangeburg County Solar Project site. The gen-tie line will be maintained by the Orangeburg County Solar Project, LLC. Petition at 2-3.

Based on the arguments and the materials submitted to the Commission, the Commission finds that the 230 kV gen-tie line and its associated facilities mandate that the Commission conduct a proceeding under the Utility Facility Siting and Environmental

Protection Act (“the Act” or “the Siting Act”), S.C. Code Ann. Section 58-33-10, *et seq.* The Petition for Declaratory Order must be denied. Further, the Commission finds that additional information is needed before making a ruling on whether the electric generating plant capacity triggers the Siting Act,¹ and therefore limits this Order to ruling on the relationship between the gen-tie line and the Siting Act.

II. DISCUSSION

Under the provisions of the Act, the General Assembly authorized the Commission to analyze “major utility facility” projects regarding design, construction, potential impact, and the public convenience and necessity requiring the facility as part the approval process. *See* S.C. Code Ann. Section 58-33-160 (1)(a) – (f). From this information, the environmental impact of the project can be studied. The threshold question is whether a proposed project is a “major utility facility.”

A “major utility facility” is defined by the Act as:

(a) an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts; or

(b) an electric transmission line and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more; provided, however, that the words “major utility facility” shall not include electric distribution lines and associated facilities.

S.C. Code Ann. § 58-33-20(2)(a) and (b) (Supp. 2021).

Subsection (a) defines a major utility facility by reference to the generating plant and associated facilities. Subsection (b) defines a major utility facility by reference to its transmission lines and associated facilities.

¹ S.C. Code Ann. Section 58-33-10, *et seq.*

The threshold for transmission lines to be declared a “major utility facility” is an operating voltage of 125 kV. S.C. Code Ann. Section 58-33-20(2)(b). The operating voltage for the transmission line in the present case is 230 kV, which would bring the transmission line into the “major utility facility” category under the Act. The Joint Petitioners assert that because the line in question is only 200 feet long and is located entirely within the Orangeburg County Solar Project site, the line should not be declared a “major utility facility,” even though the line exceeds the 125 kV operating voltage standard. Tr., Oral Arguments at p. 9. This conclusion is at least partially based on the assertion by the Joint Petitioners’ Counsel that “multiple other states” have ruled that when facilities are equipped with a line that exceeds a set capacity, and if that line is shorter than a specific length standard, then such a line should not be classified as a “major utility facility” for Siting Act purposes. Tr., Oral Arguments at 9. The Petition points out such rules from Wisconsin, North Dakota, Ohio, Virginia, and North Carolina. Petition at 5.

The difficulty is that no similar rule, based on either line length, or on the fact the line is completely contained within the solar plant’s property, exists in South Carolina. S.C. Code Ann. Section 58-33-20(2)(b) states that, for an electric transmission line, a line and associated facilities constitutes a “major utility facility” if it has an operating voltage of 125 kV or more. There are no exceptions for the length of the line, or for the fact that the line is contained solely within the boundaries of the solar project’s property. Since the line in question has an operating voltage of 230 kV, it constitutes a “major utility facility,” subject to the Utility Facility Siting and Environmental Protection Act.

Based on the oral arguments and other materials submitted to the Commission, the Commission limits this Order to ruling on the status of the 230 kV tie-line in relation to the Act. In order for the Commission to consider the legal status of the solar facilities with respect to the Act, the Joint Petitioners must provide more details to the Commission than have already been provided on the two Projects' capacity limitations, as well as total capacity for which the project is designed for or capable of.

The standard set in the Act for consideration as a "major utility facility" for electric generating plant and associated facilities is stated as being "more than seventy-five megawatts." S.C. Code Ann. Section 58-33-20 (2)(a) (Supp. 2021). The description of the facilities in the Joint Petitioners' Petition is as follows: "Each project will consist of a single electric generation facility designed to operate at a limited capacity, producing less than seventy-five megawatts." The description concludes with the opinion that the Projects do not meet the "major utility facility" definition in the Act. Petition at 4.

Dominion Energy South Carolina, Inc. ("DESC") argues, however, that the Siting Act does not simply concern operation, but instead whether the Projects are "designed for, or capable of" operating above the 75-MW threshold. S.C. Code Ann. §58-33-20(2)(a) (Supp. 2021). DESC also asserts that the Petition provides no additional details regarding the Projects' designed capability or how the output of the Projects is limited. Further, although discovery responses were provided to the Office of Regulatory Staff indicating that the output of each project is limited by inverters so that the output remains below 75 MW for each Project, the actual MW_{dc} rate of each Project has not been provided to the Commission. *Joint Petitioners' Letter, dated October 14, 2021*, at pp. 2-3 DESC asserts

that the MW_{dc} rating is the relevant capacity rating when evaluating whether the Siting Act is triggered.² *DESC's Brief in Support of Proposed Order*, at p. 6. Although this Commission has not ruled as to whether the MW_{dc} rating is the relevant capacity rating when examining the triggering of the Siting Act, and makes no such ruling here, such information could have been useful in our determination. However, at this time, the Commission declines to issue a ruling as to whether the Projects trigger the Siting Act based upon inverter-limited capacity alone. Further, the Commission must have further information prior to issuing any ruling on the applicability of the Act to the Projects presented.

III. FINDINGS OF FACT

1. The Commission has jurisdiction over DESC as a utility operating in the State of South Carolina.
2. The Commission has jurisdiction over this project pursuant to the Siting Act, and Joint Petitioners have submitted to the jurisdiction of the Commission in seeking a Declaratory Order.

² The Joint Petitioners did not consult with the Department of Health and Environmental Control, the Department of Parks, Recreation and Tourism, or the Department of Natural Resources as required by the Siting Act. Discovery responses to ORS by the Joint Petitioners state that “it is normal for solar projects to possess a MW_{dc} rating of the solar panels that is 1.3x to 1.4x that of the MW_{ac} rating of the inverters.” *DESC's Brief in Support of Proposed Order*, at *Exhibit A, Request 1-1*. “This means that these projects are capable of operating at a capacity of approximately 100 MW_{dc} which connotes a much larger footprint than the approximately 75 MW_{ac} rating of each Project would imply. In fact, the Siting Act seems to expressly acknowledge this point by stating that the facilities meeting the 75 MW threshold are those that are ‘designed for, or capable of, operation at a capacity of more than seventy-five megawatt.’ ” *Id.* at p. 5 quoting S.C. Code Ann. §58-33-20(2) (Supp. 2021).

3. The scope of the Commission's Order is based upon the limited set of facts in the record and is not precedential or binding for the purposes of any future analyses under the Siting Act.

4. The construction of a 230 kV gen-tie line triggers the provisions of the Siting Act in the present case.

5. The Commission declines to rule whether the Projects would trigger the Siting Act based upon capacity because the Petition lacks sufficient detail about the capacity which each Project is designed for, or capable of producing.

6. However, the Commission finds that the proposed Orangeburg County Solar Project and Orangeburg South Solar Project (collectively "the Projects") meet the definition of a major utility facility as defined by S.C. Code Ann. § 58-33-20(2) (Supp. 2021).

7. The Commission further finds that the Projects do trigger the requirements of the South Carolina Utility Facility Siting and Environmental Protection Act, with regard to the 230 kV tie-line and associated facilities.

IV. CONCLUSIONS OF LAW

1. The Utility Facility Siting and Environmental Protection Act defines a "major utility facility."

2. The Act defines "major utility facility" in terms of electric generating plant and associated facilities and electric transmission lines and associated facilities.

3. In the present case, the 230 kV transmission tie-line constitutes a "major utility facility," and the line is therefore subject to the Act.

4. The Commission cannot make a determination under the Act as to whether the electric generating plant in the subject plants constitutes a “major utility facility,” because of the lack of information provided. Accordingly, the Commission declines to rule on this issue.

5. The Commission cannot grant the Petition for Declaratory Order sought because of the applicability of the Siting Act to the 230 kV gen-tie line, and the lack of information with regard to the applicability of the Siting Act to the electric generating plant and associated facilities.

V. ORDERING CLAUSES

1. The Petition for a Declaratory Order requested by Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC is denied.

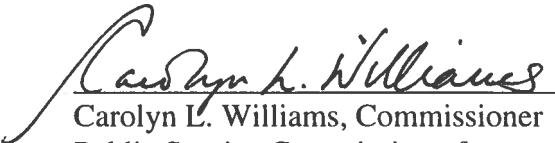
2. The proposed Orangeburg County Solar Project and Orangeburg South Solar Project (collectively “the Projects”) meet the definition of a major utility facility as defined by S.C. Code Ann. § 58-33-20(2) (Supp. 2021) and trigger the requirements of the South Carolina Utility Facility Siting and Environmental Protection Act, with regard to the 230 kV tie-line and associated facilities. Thus, no person shall commence to construct a major utility facility without first having obtained a certificate issued by the Commission.

3. The Joint Petitioners -- Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC – must make a petition to the Commission requesting a certificate to construct a major facility utility, and then obtain such certificate, as mandated by the South Carolina Utility Facility Siting and Environmental Protection Act, §§ 58-33-10, *et. seq.*, if they want to construct the Projects.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:




Carolyn L. Williams, Commissioner
Public Service Commission of
South Carolina